IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63322-2023
Reserved on: 12.03.2024.
Pronounced on: 21.03.2024.

Directorate of Enforcement ...Petitioner

Versus

Narinder Khillan …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Arvind Moudgil, and Mr. Lokesh Narang,
Sr. Panel Counsel, Govt. of India with
Mr. Shahil Rangra, Advocate
Mr. Vivek Singh, L.C., E.D. and
Ms. Bhawna Gandhi, L.C., E.D.
for the petitioner-E.D.

Mr. Abhishek Singh Rana, Advocate and
Mr. Rohit Kumar, Advocate for the respondent.

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<u>ANOOP CHITKARA, J.</u>

ECIR NO.	ECIR/CDZO-I/0/04/2023 dated 24.02.2023
Complaint No. in Trial Court	COMA38/2023 filed on 07.10.2023

1. Aggrieved by the order dated 10.10.2023 passed by the Special Judge, PMLA, Haryana at Panchkula, permitting the accused to be taken out from jail, for four days, in police security, to enable him to procure documents to file a reply to the show cause notice issued by the Adjudicating Authority under Section 8(1) of PMLA 2002, the Enforcement Directorate had come up before this Court by filing the present petition under Section 482 CrPC.

2. I have heard counsel for the parties and gone through the record. The petition neither contains a copy of the concerned application filed by the accused, nor the copy of the reply filed by the Enforcement Directorate [ED], if any.

3. It has been pointed out that, pursuant to the order, the accused was brought out

of jail for four days, and for all practical purpose matters became infructuous. The Enforcement Directorate wants a decision on the merits.

4. The Enforcement Directorate [ED] arrested the accused and filed the complaint above before the Special Court. After that, on receipt of a notice under Section 8(1) of the Prevention of Money Laundering Act, 2002, [PMLA], the accused-respondent applied before the Special Judge under PMLA for interim bail for fifteen days. Reasons for such interim bail were to collect documents to file a reply to the show cause notice regarding the retention of cash, jewelry, digital devices, FDRs, etc., which had already been taken in possession by the ED, and the accused was supposed to file a reply. The accused contended that he could not have filed the reply unless he would personally be permitted to visit the offices i.e., banks, income tax department, and the persons, including a Chartered Accountant etc.; therefore, he sought interim bail for 15 days to file an appropriate reply in the application under Section 17(4) of PMLA, which was pending before Adjudicating Authority, New Delhi, wherein Show cause notice under section 8(1) of PMLA, 2002, was issued.

5. Before the Special Court, the counsel appearing for the ED, on instructions, had strenuously opposed the application for interim bail because of the allegations of committing the grave offense of money laundering, and on that basis, he had amassed vast amounts of money. The ED also opposed the bail because the accused did not satisfy the twin conditions of Section 45 of PMLA. The specific allegations were that the respondent had illegally transferred funds from his accounts to other accounts, even during judicial custody. As such, if he is released, he will further launder the proceeds of the crime.

6. Vide impugned order dated 10.10.2023, Special Judge, under PMLA, Haryana at Panchkula, did not grant interim bail; however, directed that the petitioner be sent out for four days to collect various documents. The Special Court also clarified that for the purposes above, the applicant-accused should prepare a schedule with dates of his visit to different offices and meetings with different persons, and such schedule will be handed over to the Superintendent, Central Prison, Ambala, who was further directed to allow him to visit for the said schedule in police custody. It was also specified that the applicant should be taken to the place as scheduled from 10:00 AM to 4:00 PM and then lodged in the jail, although the applicant shall bear expenses.

7. It would appropriate to consume the relevant portions of the impugned order, which read as follows:

"7. While case set up by the applicant-accused to the above effect

> *does not seem to be entirely without substance but at the same time, contention raised on behalf of the ED as to applicant-accused being accused of a very serious crime and apprehension expressed by it as to he fleeing from justice, too can not be ignored. While deciding the present application, a balance is required to be struck, so as to see and ensure that whatever applicant-accused wants to do, is accomplished without any difficulty while, at the same time, allaying the fears and apprehensions of the ED. In these circumstances, in my considered opinion, instead of granting concession of interim bail in favour of applicant-accused, it will be just and proper if he is allowed to accomplish the above task of collecting documents, visiting different offices and meeting several persons for the purpose of preparation of reply and submission thereof before the Adjudicating Authority, New Delhi while in custody, for four days. For said purpose, applicant-accused shall prepare a schedule with the dates of his visits to different offices and meetings with different persons. Let such a schedule be prepared forthwith and submitted with the Superintendent, Central Prison, Ambala who is directed to allow the applicant-accused to do the needful as per the said schedule in police custody. The authority concerned shall provide the adequate police guard for said purpose. Applicant-accused shall be taken to the places/persons as per the schedule w.e.f. 12.10.2023 till 15.10.2023 daily from 10:00 AM to4:00 PM and thereafter, he be lodged in the Jail. Needless to say, all expenses, if any, shall be borne by the applicant-accused. One official of ED as well as an Advocate engaged by the applicant-accused will also accompany him during the above exercise."*

8. The Enforcement Directorate is aggrieved by these four days' permission to arrange documents while in police custody because of the gravity of the offense committed by the accused/respondent and the fact that even in judicial custody, the accused had transferred the money, and the non-compliance of the provisions of S. 45 of PMLA.

9. Before the trial Court and this Court, counsel for the accused clarified that the allegations of transferring money were incorrect. Even if some money was transferred, it was not the proceeds of the crime, but money gotten through legal sources.

10. An analysis of the pleadings, impugned order, and the above discussions would lead to the following outcome.

11. The relevant grounds taken by the Enforcement Directorate in this petition read as follows:

> *[B]. Because the Ld. Special Judge has overlooked the objective of legislature/legislative intent behind rigour of twin conditions u/s 45 of PMLA imposed for release of any accused is to create deterrence from committing the offence of money-laundering. The aforesaid section has been reproduced herein- …*
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> *[D]. Because, the Ld. Special Judge has inadvertently ignored the submission of the petitioner that the respondent even while in custody has dissipated the proceeds of crime. Respondent has caused transfer of Rs. 22 lacs (POC) from one bank account to another with the help of family member and in such circumstances temporary release of respondent even for a limited period of time may provide an adequate opportunity to the respondent to alienate, dispose or transfer the proceeds of crime.*
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> *[G]. Because, Ld. Special Judge erroneously ignored the fact that the being a social economic offence, allowing the respondent to meet different people outside the jail premises will result in grave miscarriage to justice it will provide a chance to the respondent to deal with the 'proceeds of crime' and crucial evidences.*
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> *[H]. Because, Ld. Special Judge has overlooked the fact that the respondent has not only committed Schedule Offence and Money laundering but also used to threaten the innocent people in order to take undue advantage and therefore, he cannot be allowed to leave jail premises even for a limited period of time.*
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> *[I]. Because, the Ld. Special Judge has ignored the fact there exist a reasonable apprehension that the respondent in garb of collecting financial documents may temper with the evidences and dispose the 'Proceeds of Crime' in order to hamper the ongoing investigation in the matter.*
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> *[J]. Because, Ld. Special Judge has failed to consider the fact that providing even a small opportunity to any accused of money laundering will seriously prejudice the on-going investigation and proceeding under PMLA."*

12. These were the main relevant objections filed in the petition and are being dealt with individually in the following paragraphs.

13. Regarding the objection of the Special Judge overlooking the twin conditions of Section 45 of PMLA 2002, it is sufficient to state that the condition would have applied only when the Court had released the petitioner on bail, whereas the Court never released him on interim bail but made arrangements to take him out of prison in police custody to file a proper response to the notice issued under Section 8(1) of PMLA 2002.

14. The release from prison in police custody is neither bail nor interim bail. While out of prison in police custody, the inmate gets out of the prison's four walls but is under continued detention. Meanwhile, while on bail or interim bail, the accused is not detained but only has an undertaking through bond to appear before the Court or surrender to the prison. The primary concerns for a Judge while ordering an inmate's release in police custody are the accused being forcibly released by their accomplices, the accused being a flight risk, or the existence of a risk to the accused's life. Thus, the twin conditions of Section 45 of the Prevention of Money Laundering Act, 2002 neither attract nor are required to be complied with while passing an order for release in police custody.

15. The Enforcement Directorate objected that Sessions Court did not consider the fact that when the accused was in custody, he dissipated the proceeds of crime to the extent of Rs.22 lacs with the help of his family members, and as such, there was a possibility of his again transferring the money even in police custody. An analysis of this argument needs the following illustration. Hypothetically, if under some pretext the accused had operated computers during such a release in police custody, it would have been almost impossible for the police guards to find out about transactions he would be doing on his computer. Further, it is again impossible to find out about the language of communication so that they would be able to know all the communication made by the accused in different languages. Thus, release under police custody cannot be with an intent to spy on them or to espionage. Reading the impugned order makes it clear that neither was it done with such a purpose nor an intent.

16. The Enforcement Directorate objects that if the petitioner is taken out of jail and permission is given to him to meet other persons outside the jail premises, it will result in a grave miscarriage of justice, and it will give him a chance to deal with the proceeds of crime and crucial evidence. This objection is far from the practicalities and the ground realities because family members and close friends are permitted to meet a prisoner even in jail. Confinement in the jail is not an isolation from society, but it is a restriction imposed on an accused to stay within four walls of a complex where people can come to meet a prisoner, and the inmates cannot come out to meet them. If somebody indulges in this tactic, they will get an opportunity during such interactions and even when the inmate comes to attend the trial. People and friends occasionally meet the prisoner at that stage, and such meetings cannot be practically stopped. Thus, this ground is not based on the ground realities, and it appears that the Enforcement Directorate is oblivious to the ground realities.

17. The next objection is that since the petitioner not only committed a scheduled offense but also threatened the innocent people, therefore if he is released from jail, he would have again threatened the innocent people. This objection is again devoid of any merits for the reason that petitioner was to be in continuous police custody and when the police guards are present it would be challenging for the petitioner to threaten the people. Further, the petitioner's release was subject to a schedule only for a limited period, as such this objection is also not sustainable.

18. In the garb of collecting financial documents, the objection that the petitioner might tamper with the evidence and dispose of the Proceeds of crime, which would hamper the investigation, is also unfair. The trial court was also aware of such a possibility but had protected the accused's right to defend himself in other notice, as well considered the possibilities of risk that would indeed accompany the granting of said permission. Thus, this Court does not find any fault in the order to that extent.

19. The next objection is that if the accused were released, it would prejudice the ongoing investigation and proceedings under PMLA, 2002. This objection is taken for its sake and has no substance.

20. A simple reading of the order makes it clear that the Special Court was concerned about affording an opportunity to the respondent to defend himself appropriately to the notice under Section 8(1) of PMLA pursuant to an application filed under Section 17(4) of PMLA 2002, filed by the Enforcement Directorate, and then instead of sending him out in police custody, the Court thought it appropriate and safe to send him in judicial custody him with the police guards. Another reason the Sessions Court might have pondered over was that the accused might be a flight risk. Probably, for these reasons, instead of giving interim bail, the Special Judge permitted the accused to visit in police custody. Thus, the trial Court was fully justified in affording an opportunity for the accused to respond to the notice under Section 8(1) of PMLA 2002.

21. The Special Court was rightly concerned to allow the respondent-accused to defend himself, enabling him to give a reply to the notice issued under Section 8(1) of PMLA 2002, which was under the application filed by the Enforcement Directorate under Section 17(4) of PMLA 2002. Further, the meticulous approach of the trial court in preparing a schedule was also to ensure there is no misuse and that the accused stays within the places mentioned in the schedule. However, it would have been suitable only if the accused was a flight risk or there was an apprehension of the accused threatening the witnesses or tampering with the evidence during such a visit out of prison.

22. Given the above, the petition is dismissed. Pending applications, if any, stand disposed of. Liberty reserved to the Enforcement Directorate to file appropriate complaint before the Trial Court for violation of the order as mentioned in Para (h) starting after para3, of the petition, qua non-participation of the Enforcement Directorate's official during the respondent's movement in terms of the impugned order.

(ANOOP CHITKARA)
JUDGE

21.03.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: **YES**.